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April 16, 2021

BY ECF & E-MAIL:

Hon. Richard J. Sullivan
United States Circuit Judge
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Nnebe v. Daus*, No. 06-cv-4991 (RJS); *Stallworth v. Joshi*, No. 17-cv-7119 (RJS)

Your Honor:

We are writing respectfully to ask that the Court reconsider its order of April 13, Dkt. No. 512. Plaintiffs are not requesting reconsideration of the denial of sanctions, but simply seek to set the record straight regarding the Court's statement that we are guilty of an "oversight" concerning Mr. Nnebe and defendants' insinuation that this oversight raises questions about our fitness as class counsel.

First, before the trial, when Mr. Nnebe was unwilling to continue as class representative, we notified the Court candidly of that fact. The Court could have dismissed him at that time, as defendants urged. Instead it allowed him to reconsider, which he did. Mr. Nnebe then showed his commitment to serving as a lead plaintiff by attending the trial so *defendants* could call him as a witness. Thus our statement—that defendants' assertion that the named plaintiffs are not interested in or informed about these actions was baseless—was fully accurate and reflected no oversight. In denying defendants' accusation about the current state of affairs, we did not claim or imply that no representative plaintiff had ever wavered during the long history of the *Nnebe* action.

Second, our observation that defendants had misrepresented the record was not because they mischaracterized our January 2, 2014 letter. They did not. We made that claim because they ignored the events and statements that followed, which made the letter moot. The Court's order overlooks these omissions, which we do think indicate bad faith on defendants' part. Further, their claim that there is a "serious doubt that plaintiffs' counsel ... will adequately represent the class" having "apparently ignored or overlooked the express wishes of their client" is equally counterfactual and also outrageous—especially in light of the fact that we have represented the putative class for 15 years, and that we clearly did respond to our client's wishes at the moment in question.

While we understand that the Court has chosen not to grant sanctions, we respectfully maintain that the Court should not have allowed defendants' belated submission and request that the Court reconsider its order in that it overlooked defendants' misrepresentations detailed in our response.

Respectfully submitted,

/s/

Daniel L. Ackman
David T. Goldberg
Shannon Liss-Riordan

cc: All Counsel (by ECF)

Though Plaintiffs now state that Nnebe has reconsidered his request not to be a class representative, their letter motion for sanctions did not provide any record support for this contention. (Doc. No. 510.) Instead, that letter relied on the fact that Nnebe appeared at trial because the City intended to call him as a witness, but this fact hardly reflects that he was willing to be a class representative. Rather, it appears that counsels' letter for reconsideration is the first time that counsel has represented to the Court that Nnebe changed his views and is now willing to proceed as class representative, despite his earlier statements to the contrary. Accordingly, the Court sees no valid reason to reconsider anything said in its order denying sanctions, and Plaintiffs' motion for reconsideration is DENIED.

SO ORDERED.

Dated: April 19, 2021
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation